Supreme Court, U.S.
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No. 99-1343

In The

Supreme Court of the United States

RICHARD C. MOENNING,

Petitioner,

v.

ILLINOIS COMMERCE COMMISSION and COMMONWEALTH EDISON COMPANY,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Illinois

BRIEF IN OPPOSITION OF THE ILLINOIS COMMERCE COMMISSION

JOHN P. KELLIHER
Counsel of Record
THOMAS R. STANTON
Illinois Commerce Commission
Special Assistant Attorneys General
160 North LaSalle Street
Suite C-800
Chicago, Illinois 60601
(312) 793-2877

Counsel for the Illinois Commerce Commission

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COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTION PRESENTED

Whether the Court has jurisdiction to review a decision by the Illinois Appellate Court dismissing an appeal from a state administrative agency as untimely solely on state law grounds?

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STATEMENT

On October 15, 1997, the petitioner, Richard C. Moenning ("Petitioner") filed a formal complaint with the Illinois Commerce Commission ("Commission" or "ICC"), the gist of which is that Commonwealth Edison Company ("ComEd"), a regulated Illinois public utility, required him to provide it with a customer deposit following a service discontinuance on or about June 11, 1997. The Complaint also alleged that ComEd declined to grant Petitioner access to its records related to the event in question as those records were considered by ComEd to be confidential. The Complaint also contained three counts challenging the lawfulness of Sections 280.50, 280.60 and 280.70 of 83 Illinois Administrative Code, which circumscribe utilities' common law rights to manage their credit policies through the requirement of customer deposits in certain circumstances. (ComEd App. 1). Petitioner has previously challenged the lawfulness of the Commission's security deposit rules. *Moenning v. Illinois Bell Telephone Company*, 487 N.E.2d 980 (Ill. App. 1st Dist 1985); *Moenning v. Commonwealth Edison Company*, 481 N.E.2d 36 (Ill. App. 1st Dist. 1985).

As background, the procedures governing customer eligibility for public utility service, deposits, and payment practices in Illinois are established by Commission rule. Specifically, under section 280.50, a utility may request a deposit from a residential customer who is an applicant for service in certain circumstances. 83 Ill. Admin. Code § 280.50 (ICC App. 1). Under section 280.60(e), a present customer whose service is disconnected is treated as an applicant for service subject to the deposit provisions of section 280.50(a). As a general rule,

a deposit plus interest is automatically refunded to a customer after twelve months, so long as the customer's service has not been interrupted for non-payment or so long as the customer has not established a pattern of late payments by, for example, paying late four times if billed monthly. 83 Ill. Admin. Code § 280.70(d) (ICC App. 3). Discontinuance of a customer's electric service is permitted under several circumstances, including a customer's failure to make or increase a required deposit or pay a past due bill. 83 Ill. Admin. Code § 280.130(a) (ICC App. 7). Petitioner's complaint contained no well-pled facts demonstrating the Commission's deposit rules did not apply to him.

In response to Petitioner's complaint, ComEd filed a motion to dismiss the case with prejudice. (ComEd App. 5). ComEd argued that Petitioner failed to raise any contested factual issue in his complaint, that his challenges to certain Commission regulations regulating public utility customer deposit practices had been fully litigated in previous Commission dockets by Petitioner, and that his complaint regarding ComEd's refusal to grant him access to certain customer records as confidential were without merit.

In Response to ComEd's motion, Petitioner asserted that he would seek by amended formal complaint to show that section 280 was not authorized by the Illinois Legislature to apply to residential customers, that the Illinois Public Utilities Act's ("IPUA") requirements that public utility rules and regulations be just and reasonable does not allow ComEd to claim its records of service are confidential, and that the IPUA's requirement that utility rates and charges be just and reasonable applies to

ComEd's customer deposit practices. (ComEd App. 17-18). Thus, according to Petitioner, his proposed amendments would be aimed at challenges to Commission rules and interpretations of the IPUA – legal as opposed to factual challenges.

On September 23, 1998, the Commission granted ComEd's motion to dismiss. *Moenning v. Commonwealth Edison Company*, Ill. C. C. Dkt. No. 97-0528 (Sept. 23, 1998) ("Order"). (Pet. App. 1). As the Commission's Order makes clear, the record in the case established that Petitioner's electric service was disconnected for non-payment of his bill, and that in accordance with the Commission's customer deposit rules (83 Ill. Admin. Code §§ 280.50 and 280.70) ComEd's request for a deposit was proper and conformed to the law and the Commission's rules. (Pet. App. 6). The Commission found that not only did Petitioner fail to present a cognizable complaint as required by 83 Ill. Admin. Code 200.170(c) but also that the arguments and allegations in both his response to ComEd's motion to dismiss and his brief on exceptions to the Hearing Examiner's Proposed Order "are clearly without merit and must be rejected." (Pet. App. 6-7). As the Commission noted in its Order, Petitioner's service was disconnected for non-payment of his bill, and the Commission's rules clearly allow a utility to request a deposit following disconnection of service for non-payment. (Pet. App. 6); 83. Ill. Admin. Code §§ 280.50, 280.60, 280.70.

With regard to Petitioner's challenges to the Commission's deposit rules, the Commission noted that the issue of the lawfulness of authorizing utility collection of deposits for customers with erratic payment patterns was

affirmed by the Illinois Appellate Court in *Moenning v. Illinois Bell Telephone Company*, 487 N.E.2d 980 (Ill. App. 1st Dist. 1985). Reviewing Petitioner's allegations in this case and comparing them to those raised in previous cases, the Commission concluded that the previous cases involving Petitioner involved a thorough review of the same allegations and issues challenging the regulations governing deposits presented in the current complaint. (Pet. App. 6).

Following the Commission's dismissal of his complaint, Petitioner attempted to appeal the Commission's decision to the Illinois Appellate Court, but failed to comply with the requirements of either Illinois Supreme Court Rule 335 or section 5/10-201 of the IPUA. For example, Petitioner filed a Notice of Appeal with the Commission on December 17, 1998. (ComEd App. 19). The Notice failed to name the Commission. Also, although section 5/10-201 requires a copy of the Notice of Appeal filed with the Commission to be filed with the appellate court within five days following service of the Notice upon the Commission, Petitioner's pleading with the Illinois Appellate Court indicates he filed his copy of the Notice on December 24, 1998, seven days following service on the Commission. (ComEd App. 22). That document also fails to name the Commission. In addition, Petitioner failed to follow the requirements of Illinois Supreme Court Rule 335. His Petition for Leave to Appeal was not filed with the Illinois Appellate Court until January 20, 1999. (ComEd App. 27).

Because Petitioner failed to perfect his appeal under either Rule 335 or under 220 ILCS 5/10-201 his appeal was properly dismissed based on the Appellate Court's

construction of Illinois law. (Pet. App. 13). Following the court's dismissal of his appeal, Petitioner filed a Petition for Leave to Appeal and a Motion for Supervisory Order. (Pet. 4). On June 30, 1999, the Illinois Supreme Court denied Petitioner's motion for Supervisory Order. (Pet. App. 16). On October 6, 1999 the Illinois Supreme Court denied his Petition for Leave to Appeal of Right or in the Alternative, Petition for Leave to Appeal. (Pet. App. 17). On November 16, 1999, the Illinois Supreme Court denied Petitioner's Motion for Leave to File a Motion for Reconsideration of the Order denying his Petition for Leave to Appeal. (Pet. App. 18). Following the denial of that motion, Petitioner filed his Petition for Writ of Certiorari with this Court.

Petitioner's arguments to the contrary, this case is not one which warrants further review by this Court. Instead, the record in this case indicates that Petitioner, a licensed attorney with a history of bringing actions before the Commission relating to the non-payment of his utility bills, filed a wholly inadequate complaint before the Commission. As a result, the Commission granted ComEd's Motion to Dismiss. Petitioner then failed to comply with the rules for obtaining judicial review of the Commission's Order, failing to follow the requirements either of Illinois Supreme Court Rule 335 or of section 5/10-201 of the IPUA. The Illinois Appellate Court's dismissal of Petitioner's untimely appeal does not afford this Court jurisdiction to review Petitioner's federal claims. Accordingly, his Petition for Writ of Certiorari should be denied.

ARGUMENT

I. This Court Lacks Jurisdiction To Review the Judgment Because the Illinois Appellate Court Dismissed the Appeal Solely On State Law Grounds.

It is well-settled that the Court has no authority to review state determinations of purely state law. *E.g.*, *International Longshoremen's Ass'n, AFL-CIO v. Davis*, 476 U.S. 380, 387 (1986). Under 28 U.S.C. § 1257, the Court will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision the Court is asked to review. *Adams v. Robertson*, 117 S. Ct. 1028, 1029 (1997) (per curiam). As a corollary, under the independent and adequate state grounds doctrine, this Court will not consider an issue of federal law on direct review from a judgment of a state court if the judgment rests on a state law ground that is both independent of the merits of the federal claim and an adequate basis for the state court's decision. *Harris v. Reed*, 489 U.S. 255, 260 (1989).

In this case, as Petitioner concedes, the Illinois Appellate Court did not address his federal due process claim and, as he tacitly concedes, the federal claim was not properly presented to the court because the court dismissed the appeal without reaching the merits. As a result, this Court lacks jurisdiction to review the Illinois Appellate Court's judgment dismissing Petitioner's appeal. *See Coleman v. Thompson*, 501 U.S. 722, 729 (1991). Further, because the requirements for application of the independent and adequate state grounds doctrine are

clearly met here, Petitioner's request for a writ of certiorari must be dismissed.

Petitioner's request must be dismissed on the authority of this Court's decision in *John v. Paullin*, 231 U.S. 583 (1913), which controls the disposition of this case. In *Paullin*, the Court was asked to review a decision of the Oklahoma Supreme Court dismissing an appeal on the ground that certain parties whose presence was essential to the appeal were not brought into the proceeding as required by Oklahoma law. *Paullin*, 231 U.S. at 585. Respondents challenged the jurisdiction of the Court to hear the case. In dismissing the writ of error for want of jurisdiction, the Court held that the state court's "judgment of dismissal turned entirely upon a question of local law" and, therefore, the Court lacked jurisdiction to review the judgment. *Id.* at 586-87. The Court observed:

> As the Supreme Court of the State did not pass upon the merits of the case or upon the correctness of any of the rulings below, but, on the contrary, held that it was powerless to do so because its appellate jurisdiction was not invoked in accordance with the laws of the State, we do not perceive any theory upon which its judgment of dismissal may be reviewed by us consistently with the familiar limitations upon our authority. Certainly no federal right was denied by that court, and if, as was held by it, its appellate jurisdiction was not properly invoked, no Federal question was before it for decision.
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> * * * *

> Thus it appears that nothing was decided but the preliminary question of the court's jurisdiction to pass upon the controverted matters shown in the record, and that this question was resolved according to what the court deemed to be the true construction and effect of applicable provisions of the constitution and laws of the State. In short, the judgment of dismissal turned entirely upon a question of local law.

Id. at 585-86 (citation omitted). *See Chesapeake & Ohio Ry. Co. v. McDonald*, 214 U.S. 191, 195 (1909) (dismissing a petition for writ of error because petitioner failed to seek review of the state court judgment within the time prescribed by the state statute for review of such orders).

In this case, Petitioner failed to comply with the rules for appealing a Commission order, the Illinois Appellate Court dismissed his appeal on that basis, and on the authority of *Paullin* and *Chesapeake*, among other cases, this Court lacks jurisdiction to review that judgment resting exclusively on Illinois law. The Illinois Appellate Court relied on the State's procedural rules as an independent basis, indeed the sole basis, for its disposition of Petitioner's appeal. In the Illinois Appellate Court, Respondent ComEd moved to dismiss Petitioner's appeal on three procedural grounds: i) failure to file a timely notice of appeal with the Appellate Court; ii) failure to file a timely petition for review with the Appellate Court; and iii) failure to name a necessary party in the notice of appeal. (ComEd App. 30-36; Pet. 3). The court granted ComEd's motion and dismissed the appeal. As a consequence, the parties did not brief the merits and the court did not decide the merits of Petitioner's appeal.

In addition, the Illinois Appellate Court's judgment rests on an adequate state law ground. This Court often has recognized the important interest in finality served by state procedural rules and observed that "it is beyond question that under the Due Process Clause of the Fourteenth Amendment [states] may attach reasonable time limitations to the assertion of federal constitutional rights. *Francis v. Henderson*, 425 U.S. 536, 541 (1976) (quoting *Michel v. Louisiana*, 350 U.S. 91, 97 (1955) (internal quotation marks omitted). In Illinois, 220 ILCS 5/10-201 and Illinois Supreme Court Rule 335 establish the procedures for appealing Commission orders. Under either rule, Petitioner's appeal was untimely and appellate jurisdiction did not attach. The Illinois Appellate Court found that Petitioner failed to comply with state law procedures to invoke appellate jurisdiction and, therefore, procedurally defaulted his right to appeal the Commission's Order. Accordingly, the Illinois Appellate Court's judgment is clearly an adequate state ground and independent of the merits of Petitioner's federal due process claim.

II. The Commission's Rules Provide for Dismissing Complaints Without Evidentiary Hearings and the Commission Dismissed Petitioner's Complaint in Accordance with Due Process of Law.

As a general principle, the Due Process Clause of the Fourteenth Amendment does not impose on state agencies a constitutional requirement to hold an evidentiary hearing upon every complaint. *E.g., Weinberger v. Hynson, Westcott and Dunning, Inc.*, 412 U.S. 609, 621 (1973). The

gravamen of Petitioner's first reason for granting certiorari is that the Commission lacks authority to dismiss formal complaints without holding an evidentiary hearing and, in doing so here, the Commission violated his right to due process. (Pet. 5, 10). Contrary to Petitioner's assertion, the Commission has the authority to dismiss complaints without holding evidentiary hearings and its exercise of that authority here did not violate any process to which Petitioner is due.

Section 5/10-101 of the IPUA provides, in relevant part: "The Commission . . . shall have power to hold investigations, inquiries and hearings concerning any matters covered by the provisions of this Act, or by any other Act's relating to public utilities subject to such rules and regulations as the Commission may establish." 220 ILCS 5/10-101 (West Supp. 1999) (ICC App. 6). Section 5/10-101 further provides: "[T]he Commission may adopt reasonable and proper rules and regulations relative to the exercise of its powers, and proper rules to govern its proceedings, and regulate the mode and manner of all investigations and hearings, and alter and amend the same." In accordance with this grant of authority, the Commission adopted rules to govern its proceedings.

The Commission's Rules of Practice provide for dismissal of proceedings without holding evidentiary hearings. Section 200.190(a) of the Rules specifically provides: "Motions may be presented requesting . . . the dismissal of the proceeding for want of jurisdiction, or want of prosecution . . . *or such relief or order as may be appropriate.*") (emphasis added). 83 Ill. Admin. Code Section 200.190(a); *see id.* § 200.190(f) ("When the Commission grants a contested motion to dismiss a proceeding, in

whole or part, the Commission shall issue an order presenting its rationale for the grant."). (ICC App. 5). In addition, Illinois courts have confirmed that the Commission may dispose of complaints without evidentiary hearings. *See, e.g., Chesterfield-Medora v. ICC*, 37 Ill.2d 324, 328 (1968) ("To hold that evidentiary hearings are necessary upon the filing of every complaint and that any company made a party, even though wrongfully, must respond and defend is compelled by neither the statute nor common sense."). *See also Bloom Twp. High Sch. v. ICC*, 722 N.E.2d 676, 687 (Ill. App. 1st Dist. 1999) (assuming Commission had authority to grant summary disposition of complaints). Unsurprisingly, Petitioner points to no statutory provision requiring the Commission to hold an evidentiary hearing upon the filing of every complaint.

In exercising its authority, the Commission correctly dismissed Petitioner's complaint in accordance with due process of law. In his complaint before the Commission, Petitioner challenged the lawfulness of the Commission's deposit rules and ComEd's actions in not providing him with certain information relating to discontinuance of his electric service. (ComEd App. 1-4). In relief, he asked the Commission to declare that ComEd's customer records are not "confidential" and must be disclosed to customers, to enjoin enforcement of Commission rules 280.50, 280.60, and 280.70, and to require ComEd to furnish reasonable, just and nondiscriminatory electric service to him. (ComEd App. 4). In response, ComEd moved to dismiss Petitioner's complaint for failure to state a claim upon which relief can be granted.

The Commission found it uncontroverted that Petitioner's electric service was disconnected for nonpayment. (Pet. App. 6). The Commission also found the deposit rules to be lawful. (*Id.*). As a result, the Commission determined ComEd's request for Petitioner to pay a deposit to have his service reconnected to be lawful and in accordance with the Commission's rules and regulations. (*Id.*). Further, the Commission found no outstanding issues of fact or law. (*Id.* at 6-7).

"In procedural due process claims, the deprivation by state action of a constitutionally protected interest in 'life, liberty, or property' is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest *without due process of law.*" *Zinermon v. Burch*, 494 U.S. 113, 125 (1990). Assuming Petitioner has a constitutionally protected interest that the Commission deprived, that interest was deprived with due process of law. At the Commission, Petitioner filed, among other things, a brief in opposition to ComEd's motion to dismiss, filed exceptions to the hearing examiner's proposed order, and filed an application for rehearing of the Commission's decision. The Commission considered all of Petitioner's arguments and found them to be without merit. Furthermore, Petitioner availed himself of the opportunity to appeal the Commission's order to the Illinois Appellate Court, but failed to perfect his appeal and, hence, the appeal was dismissed. (Pet. App. 13). Thus, in the proceedings before the Commission, and in the appellate court, Petitioner received all the process he was due.

III. Petitioner's Failure to Perfect His Appeal Precluded Judicial Review of the Commission's Order.

Regarding Petitioner's second reason for granting a writ of certiorari, he appears to argue that he has an absolute right to judicial review of the Commission's order notwithstanding his failure to follow the procedures established to obtain such review. (Pet. 7-9). The gist of his argument, as best as we can discern it, seems to be that his failure to follow 220 ILCS 5/10-201, the statute prescribing judicial review of Commission orders, is not fatal, but that his untimeliness can be excused by Illinois Supreme Court Rule 335, which prescribes the procedures for direct review of orders of administrative agencies, and the court's dismissal of his appeal constituted a denial of due process. In other words, Petitioner argues that he can follow either rule – at his option – and the court must hear his appeal. Petitioner's argument, however, is not only wrong but also irrelevant because Petitioner failed to perfect his appeal under either 5/10-201 or Rule 335. Accordingly, Respondent ComEd moved to dismiss his appeal in the appellate court and the court granted the motion.

More basic, Petitioner fails to establish a federal issue. Whether Petitioner complied with the requirements for obtaining review of the Commission's order is a question of purely state law. "Without any doubt it rests with each State to prescribe the jurisdiction of its appellate courts, the mode and time of invoking that jurisdiction, and the rules of practice to be applied in its exercise; and the state law and practice in this regard are no less applicable when Federal Rights are in controversy than

when the case turns entirely upon questions of local or general law." *Paullin*, 231 U.S. at 585. And, as *Francis* informs, under the due process clause, states "may attach reasonable time limitations to the assertion of federal constitutional rights." *Francis*, 425 U.S. at 541 (internal quotation marks omitted). Petitioner does not challenge the reasonableness of the requirements for obtaining judicial review of Commission orders. Nor does Petitioner claim that the Illinois Appellate Court's dismissal of his appeal denied him due process. Rather, the nub of his claim is that the court simply erred in dismissing his appeal. But an error of state law, as alleged here, does not amount to a constitutional violation of due process.

To the extent Petitioner contends that the Commission itself somehow infringed his right to appeal ("the case presents the perplexing question whether the agency itself ought to control the process of judicial review" (Pet. 7)), this contention, like the previous one, does not raise a federal issue and, in any event, is plainly without merit. The Illinois legislature established in section 5/10-201 of the IPUA the procedures for obtaining review of Commission orders. Pursuant to section 5/10-101 of the IPUA, the Commission adopted a rule requiring appellants to name the Commission in their notices of appeal.[1] 83 Ill. Admin. Code Section 200.890(b). (ICC App. 7). Petitioner fails to explain how the Commission's rule is unreasonable or otherwise deprives him of due process of law in

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[1] Section 200.890(b) is similar to Illinois Supreme Court Rule 335, which requires that the agency be named as Respondent in the petition for review. *See* 155 Ill.2d R. 335.

violation of the Fourteenth Amendment. Petitioner simply failed to comply with the rule requiring him to name the Commission in his notice of appeal. In response, ComEd moved to dismiss Petitioner's appeal, noting the failure to name the Commission as one of three reasons for dismissal. Thus, Petitioner has supplied no whisper of support for the contention that the Commission somehow denied him his opportunity for judicial review.

CONCLUSION

The petition for a writ of certiorari should be dismissed or, in the alternative, denied.

Respectfully submitted,

JOHN P. KELLIHER*
THOMAS R. STANTON
Illinois Commerce Commission
Special Assistant Attorneys General
160 North LaSalle Street
Suite C-800
Chicago, Illinois 60601
(312) 793-2877

Counsel for the Illinois Commerce Commission

Counsel of Record

March 24, 2000

Section 280.50 Applicants for Service

a) If, after a review of its own past service records, a utility finds that an applicant for residential services has failed to pay for past due utility service for the same class of service furnished to him/her at the same or at another address, a utility may refuse to provide service, unless the applicant, at the option of the utility, pays any past due bill and/or provides a deposit pursuant to Section 280.70 and/or enters into a deferred payment agreement pursuant to Section 280.110. For purposes of this subsection, a utility may refuse to provide service if the applicant is liable for a past due bill for utility service pursuant to Section 15 of the rights of Married Persons Act [750 ILCS 65/15], unless the applicant, at the option of the utility, pays any past due bill and/or provides a deposit pursuant to Section 280.70 and/or enters into a deferred payment agreement pursuant to Section 280.110.

* * * *

Section 280.60 Present Customers

* * * *

e) A present customer whose service is discontinued becomes an applicant for service subject to the provisions of Section 280.50 herein for purposes of reconnection of his/her service.

* * * *

Section 280.70 Deposits

a) Applicants for Service – Conditions under which a utility may request a deposit from applicants for service are set out in Section 280.50 herein.

b) Present Customers – Conditions under which a utility may request a deposit from present customers are set out in Section 280.60 herein.

c) Amount

1) Deposits required of applicants for residential service, residential customers, applicants for non-residential service which are not "small businesses" (see Section 280.40), and non-residential customers which are not small businesses, shall be governed by the following:

A) In the case of gas utilities and electric utilities, no utility shall request a deposit from an applicant for residential service or from an applicant for residential service or from a residential customer IN EXCESS OF 1/6 OF THE ESTIMATED ANNUAL CHARGES FOR SERVICE FOR THE APPLICANT OR CUSTOMER COMPUTED AT THE NET RATE FOR THAT CLASS OF SERVICE. (Section 3 of P.A. 83-1343). In the case of gas utilities and electric utilities, no utility shall request a deposit from an applicant for non-residential service or from a non-residential customer in excess of 1/3 of the amount of the estimated annual charges for service for the applicant or customer computed at the net rate for that class of service. In the case of water utilities and sanitary sewer

utilities, no utility shall request a deposit from an applicant or customer in excess of 1/3 of the estimated annual charges for service computed at the net rate for that class of service.

B) A UTILITY MAY REQUEST THAT A MINIMUM OF 1/3 OF THE AMOUNT OF A REQUESTED DEPOSIT BE PAID WITHIN TWELVE DAYS AFTER THE ISSUE DATE OF THE REQUEST FOR DEPOSIT. At least two billing periods shall be allowed by gas utilities and electric utilities in which to pay the balance of the deposit. A period of thirty days shall be allowed by water utilities and sanitary sewer utilities in which to pay the balance of the deposit.

* * * *

d) Refund of Deposits

1) Deposits plus interest shall be automatically refunded after being held for twelve months as follows:

A) if the twelve months during which the deposit was held are within the first twenty-four months that a customer has received utility service, the deposit plus interest shall be refunded only so long as the service has not been interrupted for nonpayment or so long as the customer has not paid late four times if billed monthly, two consecutive times or three times if billed bi-monthly or two times if billed quarterly or semi-annually or so long as the customer's wires,

pipes, meters or other service equipment have not been tampered with during the time the deposit was held which resulted in the customer enjoying the benefit of the tampering.

B) if the twelve months during which the deposit was held were subsequent to the first twenty-four months that a customer has received utility service, the deposit plus interest shall be refunded only so long as the service has not been interrupted for nonpayment or so long as the customer has not paid late six times during the past twelve months if billed monthly, or three times if billed bimonthly or two times if billed quarterly or semi-annually or so long as the customer's wires, pipes, meters or other service equipment have not been tampered with during the time the deposit was held which resulted in the customer enjoying the benefit of the tampering.

C) deposits plus interest need not be refunded until the customer pays any past due bills for utility service.

2) Deposits plus interest shall be refunded upon the discontinuance of service for more than thirty days less the amount of unpaid bills, if any, for the service. A transfer of service from one premise to another within the area served by the utility need not be deemed a discontinuance of service by the utility if the character of service remains the same. When a deposit plus interest is applied to the liquidation of unpaid bills, the utility shall provide the customer with a

statement. (Cancellation Notice) showing the amount of the deposit, the amount of any accrued interest, the amount of the unpaid bill(s) liquidated by the deposit plus interest and the balance remaining due either to the customer or to the utility.

* * * *

4) At the option of the utility, a deposit plus interest may be refunded, in whole or in part, at any time earlier than the times hereinbefore prescribed.

Section 200.190 Motions

a) Motions may be presented requesting a more sufficient pleading, a bill of particulars, the striking of irrelevant, immaterial, scurrilous or unethical matter, the addition of necessary parties, the dismissal of the proceeding for want of jurisdiction or want of prosecution, the quashing of a subpoena, the postponement of an effective date of an order, the extension of time for compliance with an order or such other relief or order as may be appropriate.

b) Motions may be presented requesting the Hearing Examiner's direction concerning prehearing submissions and procedures as provided in Section 200.310 of this Part.

c) Motions, unless made during a hearing, shall be made in writing, shall set forth the relief or order sought and shall be filed and served as provided in Section 200.150(b), (c), and (d) of this Part.

Motions based on matter which does not appear of record shall be supported by affidavit.

d) Relief pending disposition of a proceeding, including interim relief, may be requested by motion.

e) Unless otherwise specified by the Hearing Examiner, responses to motions shall be filed and served within 14 days after service of the motion and replies to responses shall be filed and served within 7 days after service of the responses.

f) When the Commission grants a contested motion to dismiss a proceeding, in whole or in part, the Commission shall issue an order presenting its rationale for the grant.

5/10-101. Investigations and hearings

§ 10-101. The Commission, or any commissioner or hearing examiner designated by the Commission, shall have power to hold investigations, inquiries and hearings concerning any matters covered by the provisions of this Act, or by any other Acts relating to public utilities subject to such rules and regulations as the Commission may establish.

* * * *

To the extent consistent with this Section and the Illinois Administrative Procedure Act, the Commission may adopt reasonable and proper rules and regulations relative to the exercise of its powers, and proper rules to

govern its proceedings, and regulate the mode and manner of all investigations and hearings, and alter and amend the same.

Section 200.890 Appeals

* * * *

b) Notice of appeals under Section 10-201 of the Public Utilities Act [220 ILCS 5/10-201] shall be served on all other parties of record. The notice of appeal filed with the Commission shall be captioned "(The name of appellant) v. Illinois Commerce Commission." In the body of the notice the appellant shall state the name and number of the Commission Docket, the order or orders appealed, but shall otherwise follow the form established by the Supreme Court Rules.

* * * *

Section 280.130 Discontinuance of Service

1) Discontinuance

A utility may discontinue service when any customer fails to do any of the following:

A) make a deposit or increase a deposit pursuant to Section 280.70 herein;

B) pay a past due bill owed to the utility for the same class of service furnished at the same or at another location . . . ;

C) comply with an order of the Commission;

D) make payment in accordance with the terms of a deferred payment agreement;

E) comply with any rules of the utility on file with the Commission for which the utility is authorized by tariff to discontinue service for noncompliance on the part of the customer or user; or

F) provide utility representatives with access to the meter after receiving consecutively estimated bills for four billing periods if billed monthly or bi-monthly or two billing periods if billed quarterly or semi-annually and the utility thereafter makes a written request for access.

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